Supreme Court of the Hawaiian Islands.--In Banco. April Term. 1887.

Appeal from Decision of PRESTON, J.

LEIAU (W) AND KAUALOHA (K) VS. KAHAI KALUA.

JUDD C. J., M'CULLY J., PRESTON J., BICKERTON J. (FORNANDER J., ABSENT.)

Opinion of the Court

We have considered carefully the pleadings and evidence in this case, and the arguments of counsel, and are of the opinion that the decision rendered by Mr. Justice Preston on the 12th January last should be sustained, and we hereby adopt the same and affirm the decree made.

M. Thompson for plaintiffs; Jona. Austin jor defendant.

Honolulu, May 25, 1887.

Decision of PRESTON, J., appealed from.

On the eleventh day of December, 1880, the complainant, Leiau, being then a widow, executed a deed in favor of her brother, whereby for the "consideration of one dollar paid in "my hand and the agreement of Ka-"haikalua (the defendant) to support "me until death, and I to live on the "land till the end of my natural life, "therefore I hereby sell and release by "this deed to the said Kahaikalua, his "heirs and assigns, that piece of land "situated in Kaakopua, Honolulu, "aforesaid, being Apana 1 mentioned "in Royal Patent No. 218, Kuleana "No. 1669, with all the rents, issues, "appurtenances and profits thereof "and belonging thereto."

On the 28th August last Leiau and her husband commenced this suit and by their bill allege (inter alia,)

That the said deed was made in contemplation of the said Leiau's marriage with one Kealiikuawaa, (to whom she was married three days thereafter) and that the said deed was not made for the use, benefit or behoof of the defendant, but was made for the sole use, benefit and behoof of said Leiau, and to secure to her all the means of support that could in any way be derived from the said property in case said Kealiikuawaa should fail to support her while he lived, and also to prevent the said Kealiikuawaa from acquiring any interest in the said property, all of which the defendant well knew. The complainant, Leiau, admits that her said husband, Kealiikuawaa amply supported her from the time of the marriage until his death, and from that time until she married her co-plaintiff she supported herself by the rents and by means of said property, and the assistance of friends, and her present husband owns considerable property and has supported her amply since her marriage and that she has not needed, and has not received any support from the defendant.

That the defendant, from childhood until the early part of the year 1881, lived on the said land, and then left, but returned there with his wife in October, 1885, and left finally in June or July, 1886, and that he at various times claimed to be entitled to said property absolutely, and to the immediate possession thereof.

That the object and purpose for which the said deed was made have been accomplished, and that the only trust created in and by said deed terminated upon the death of Kealiikuawaa, and that said Leiau is entitled to the actual possession and enjoyment of the said property and to call upon the defendant to execute such conveyance of the legal estate as she may direct.

The bill prays that defendant be decreed to execute a deed of quit claim of said property to the complainant, Leiau, and for an injunction restraining defendant from disposing of, or interfering with the complainant's possession of the said property.

The answer admits that the deed was made in contemplation of the marriage of the complainant, Leiau, and to prevent her husband acquiring any interest in the premises conveyed and in consideration of the undertaking on the part of the defendent to support the said Leiau, and to permit her to reside upon the premises until her death, and that he has fulfilled, and intends to continue to fulfill his said undertaking.

Other matters alleged in the bill, and which are not important to the decision of the case, are either traversed or admitted.

At the hearing, the complainant, Leiau, testified that she told the defendant that she was going to put her property in his keeping as her intended husband might owe a great deal, so she wanted her property protected, and told him that if her husband was to die before her then the property would be hers, but we should go and live on the property, as we were all relatives, and should live together.

The complainant denied that she gave instructions to have the deed prepared, but I find the weight of testimony is against her on this point, and that she did instruct J. M. Kanoakua to prepare a deed and that he did so, but that she objected to sign it, because it did not contain a provision that the defendant should support her, and the document so prepared was destroyed, and the deed in question was prepared and read over to her before she executed it.

The complainant does not allege that she misunderstood the effect of the deed, or that her signature was obtained by any false representation.

It appears also from the evidence that when taxes became due the defendant being unable to pay them, delivered the deed up to Leiau, who then and ever since has paid them.

It is to be regretted that the complainant did not instruct a lawyer to prepare the deed, and explain to him fully what she proposed to do, but unfortunately, as is too common in cases where native Hawaiians wish to make over their property in trust, they have no idea what is necessary to be done, and think it is only requisite that the property should be conveyed and they rely upon the understanding between the parties.

In proportion to the population, I think more applications are made to the Courts of this country to set aside deeds, than in any other, and I think such applications should not be encouraged, but I am of opinion in this case, that the complainant is entitled to the relief asked for, and that no possible hardship can be inflicted upon the defendant by making a decree accordingly.

I therefore declare that the defendant is a trustee of this property, and that upon tender of a deed of quit claim, he execute the same, and be restrained in the terms of the bill.

Under the circumstances the parties must pay their own costs.

M. Thompson for plaintiff; Jona. Austin for defendant.

Honolulu, January 12, 1887.

Supreme Court of the Hawaiian Islands--In Banco. April Term, 1887.

Y. ALAU VS. THOS. W. EVERETT AND A. N. KEPOIKAI.

JUDD C. J., M'CULLY J., PRESTON J., BICKERTON J. (FORNANDER J., ABSENT.)

Opinion of the Court by BICKERTON J.

This matter comes here on a bill of exceptions to the rulings of Chief Justice Judd during the trial at the January term 1887, and to the refusal of the Chief Justice to grant a new trial on motion by defendant, Kepoikai, which motion was overruled *pro forma*. The case of Ami against the same defendants was tried together with this, on a stipulation filed as follows:

"It is hereby stipulated and agreed that the case of Ami vs. T. W. Everett and A. N. Kepoikai do stand and abide by the judgment of the Court in the case of Y. Alau vs. T. W. Everett and A. N. Kepoikai on motion for new trial and on bill of exceptions and no other motion for new trial, and bill of exceptions need be filed in the case of Ami vs. Everett and Kepoikai."

The verdict of the jury was in favor of defendant as to Everett, who is the sheriff of Maui, and who executed the warrant of arrest, and for $200 damages in both cases against defendant, Kepoikai.

The cause of action was the alleged false imprisonment of plaintiff, by his being arrested at Kahalui, Maui, and taken to Wailuku, and there placed in jail for about half an hour, upon a warrant issued by defendant, Kepoikai, for the alleged contempt of plaintiff, of an order of said defendant (acting as a Police Judge of Wailuku). The order was for the giving of a bond by Alau and Ami in a replevin suit, wherein they were defendants, conditioned for the production at Court of the horse which was the subject matter of the suit.

There seems to be no dispute as to the fact of the order being made, and the arrest for contempt, and the incarceration of plaintiff in the Wailuku lockup or jail, for the space of thirteen to fifteen minutes, until the fine of $25 each, which defendant, Kepoikai, had imposed, was paid by one Nakookoo, one of plaintiff's attorneys.

The first question for us to consider is, did the defendant, Kepoikai, have authority and jurisdiction to order the making and filing of said bond.

We think that the order was beyond his authority and in excess of his jurisdiction, and therefore void. The statute "to regulate the practice in suits for the recovery of personal property," Chap. 38 of the laws of 1884, provides the way in which the plaintiff in the horse case, could have had the sheriff take possession of the horse and deliver to him, bonds etc., being required, and thereby secure its production at the Court on the day of trial. The plaintiff or his attorney did not avail himself of this law. If he had done so, there would have been no necessity to apply to the Police Judge to make the order he did. This statute is very full, and provides every protection required, both for the plaintiff and defendant in replevin suits. We do not say a Police Judge may not grant continuances on terms, but in this case the statute controls. And, further, it was for the jury to find (upon the evidence before it which was contradictory,) whether such terms really were imposed. It was not the province or privilege of the Court to instruct the jury that such was the fact, therefore there was no error. We consider that the whole wrong arose from an error of judgment on the part of the defendant, Kepoikai.

In the case of "In re Cohn," 5 Cal., 495, cited by defendendant, we find it is applicable to cases where Courts having jurisdiction should issue an order. In some respects that case supports the position we take in regard to the authority of inferior Courts of limited jurisdiction to make and issue such orders.

It is noticeable that the order made for the filing of the bond did not limit or state the time in which the bond was to be filed; it was indefinite. There must be some time stated in which to file a bond to enable the parties to comply with the order.

The next question is: Is the verdict excessive in the sense that will suffice to set it aside.

Section 1128, Compiled Laws, provides that "in all cases of injury, direct or consequential, to the plaintiff in person or his wife, child or servant, or to his or her or their character or feelings, or to his property, real or personal, the measure of damages shall be determined by the jury.

"In actions for personal torts the law does not attempt to fix any precise rule for the admeasurement of damages, but from the necessity of the case leaves their assessment to the good sense and unbiased judgment of the jury. Their verdict, as in all other cases, is subject to review by the Court, but it will never be disturbed unless the damage is so obviously disproportionate to the injury proved as to justify the conclusion that the verdict is not the result of the cool and dispassionate consideration of the jury." Hayne on New Trial and Appeal, Sec. 95, p. 265 and note at end of Section.

"The Court in actions of trespass especially for personal torts, when damages can be guaged by no fixed standard, but necessarily rest in the sound discretion of the jury, interferes with a verdict on the mere ground of excessive damages with reluctance, and never except in a clear case."

Berry and al. ads., Vreeland, N. J. Law Rep. pp. 183 and 187.

"Damages for torts should be outrageously excessive to justify a new trial."

Vunk vs. Hall, 3 N. J. Law Rep., 90, 94 and a number of other cases there cited.

Before we can interfere with the verdict in a case of this nature, we must be satisfied that enough is shown to raise the presumption that the jury acted with prejudice, passion, partiality or corruption, or that the verdict is so grossly excessive as to sheck the moral sense, or that the damages are manifestly exorbitant, etc., etc.

We are free to say that under the circumstances of this case, the damages seem to be rather large. The plaintiffs certainly should have enough to cover their costs and expenses of trial. But men of sound judgment may differ not a little in estimating the compensation which the circumstances of the injury would justify. It is the judgment of the jury, and not that of the Court, which must govern.

We do not find anything in this case that would justify us in interfering with the verdict. The exceptions are overruled with costs.

Ashford & Ashford for plaintiffs; A. Rosa, Whiting and Creighton for defendants.

Honolulu, May 23, 1887.

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